REMARKS

I. RESTRICTION REQUIREMENT

The Office Action dated November 23, 2007 required restriction of further prosecution **to one of the following groups**:

Group I composition claims 1 to 4, 6 to 13, 16 to 23, 37 to 43, and 49 for compositions containing ascorbic acid, and/or derivatives or salts thereof; an oxygen-utilizing ascorbate oxidase; and at least one cosmetic ingredient;

Group II composition claims 1, 14 to 15 and 44 to 48 for the embodiments in which the ascorbate oxidate is covalently bonded to a solid support to immobilize it;

Group III method claims 24 to 29 drawn to methods of preparing a composition containing the Group I ingredients plus oxygen;

Group IV method claims 30 to 33 drawn to a method of oxidative treatment of keratin using a composition similar to that of the Group I claims;

Group V method claim 34 drawn to a method of hair shaping using a composition similar to that of the Group I claims; and

Group VI method claims 35 to 36 drawn to a method of permanently waving hair with a composition similar to that of the Group I claims.

II. PROVISIONAL ELECTION OF GROUP IV CLAIMS

Claims 30 to 33 (Group IV) for a method of oxidative treatment of keratin are ***provisionally*** elected for further prosecution. However the restriction requirement is respectfully traversed.

In addition, new dependent method claims 50 to 54 have been added, which depend on independent method claim 30.

Also claim 30 has been amended to include the new step b) of adding oxygen to the composition in order to form dehydroascorbic acid, the oxidizing agent that is the effective ingredient in the claimed oxidation treatment. The disclosures in the originally filed specification on page 3, second full paragraph; page 9, next-to-last line, to page 10, first line; page 16, next-to-last line; provide the basis for including this new step b) in claim 30.

The concentration ranges of new dependent method claim 50 are disclosed on page 14, last paragraph, of applicants' originally filed specification.

The pH range for the cosmetic composition according to claim 51 is found on page 13, second full paragraph, of the applicants' originally filed specification.

The subject matter of claim 53 is disclosed on page 10, lines 4 to 8, of applicants' originally filed specification.

The cosmetic ingredients of claims 52 and 54 are supported by the examples in the specification and the disclosures in the paragraph running from pages 4 to 5 of the originally filed specification.

III. TRAVERSAL OF THE RESTRICTION REQUIREMENT

According to MPEP 1893.03 and 37 C.F.R. 1.475 a group of inventions can be claimed in the same U.S. National Stage application when there is a single general technical feature in all the claims for the various inventions that distinguishes the claimed invention from the prior art (which is based on PCT Rule 13.1 and 13.2).

Page 3, second paragraph, of the Office Action dated November 23, 2007 cited U.S. Patent 6,165,500, which discloses some embodiments of their disclosed compositions that contain ascorbic acid (column 25, line 42) and ascorbic oxidase (column 45, line 6). Also some embodiments can contain a buffer (column 68, table).

US '500 claims a method of transporting medical agents through skin in which a pharmaceutically acceptable medium containing transfersomes comprising the medical agents is applied to the skin. In some embodiments the transfersomes could conceivably contain ascorbic acid and ascorbic oxidase, but the number of possible embodiments based on combining optional ingredients of US '500 is so astronomically large that it is doubtful that US '500 would establish a case of *prima facie* obviousness of a composition claim containing ascorbic acid and ascorbic oxidase. There is no motivation or suggestion to include the ascorbic acid and ascorbic oxidase together in the transfersomes (See M.P.E.P. 2141 and following and *In re Baird*, 29 USPQ^{2nd} 1550 (1994)).

In addition, all independent claims 24, 25, 30, 34, 35, and 57 (which replaces canceled claim 1) of groups I to VI have been further amended to claim a composition (claim 57 and the claims dependent on it) that includes a content of **oxygen**, ascorbic oxidase, ascorbic acid, a cosmetic ingredient, and **dehydroascorbic acid** formed by enzymatic oxidation of the ascorbic acid by the oxygen in the presence of the ascorbic oxidase OR a method of making this composition containing all these ingredients (claim 24 or 25 and the claims dependent on them) OR a method of using this composition containing all these ingredients (claims 30, 34, or 35 and the claims dependent on them).

The last full paragraph on page 3 of the Office Action appears to agree that if the composition and method claims include a single technical feature that distinguishes from the prior art and all independent claims contain the same feature that all the groups except for Group II can be prosecuted in the same application according to 37 C.F.R. 1.475 (b), category (3).

In other words **all** the amended claims above contain the same technical factor that distinguishes them from the prior art: namely a composition that contains oxygen, ascorbic oxidase, ascorbic acid, a cosmetic ingredient, and dehydroascorbic acid.

US '500 does **not** anticipate or render these amended claims obvious, because US '500 does **not** disclose or suggest that the transfersomes, which are embedded in the pharmaceutically acceptable medium, contain either oxygen or dehydroascorbic acid, which is the oxidizing agent or effective ingredient in the claimed compositions or methods. In fact, a search of this lengthy reference by

computer for disclosure containing the term “oxidation” revealed that this term occurs only once in the entire specification.

Thus the amended claims include the required common technical features that distinguish them from the prior art, which are required by PCT Rule 13.1 and 13.2.

Furthermore applicants respectfully traverse the restriction between the claims of groups I and II, which depend on claim 1. Annex B “Unity of Invention” of the PCT after discussing Rule 13.1 and 13.2 states as follows:

> “(c) **Independent and Dependent Claims.** Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims….
> (i) If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect to any claims that depend on the independent claims.”

Thus the restriction requirement between the Group I claims and the Group II claims is improper and does not comply with the basic the PCT procedure for determining unity of invention or lack thereof.

Thus withdrawal of the restriction requirement to limit prosecution to one of groups I to VI is respectfully requested in view of the common technical distinguishing feature that is now included in all of the above amended independent claims.

IV. SPECIES ELECTION REQUIREMENTS

Should the restriction requirement be withdrawn but a species election requirement be maintained for the composition or other claims, then the following are applicants' choices for election of species (in part from the prior amendment):

(b) an enzyme stabilizing substance consisting of a buffer (species of claim 13);

(c) a solid support for the enzyme consisting of PEG (species of claim 15);

(d) a cosmetic ingredient consisting of an emulsifier (species of claim 19);

(e) anionic surfactants (species of claim 37);

(f) fatty alcohol sulfate (species of claim 38).

In the event of further prosecution in which thickeners are elected as the species of cosmetic ingredient, the following thickener is elected:

(g) fatty alcohol (species of claim 39).

In the event of further prosecution in which alcohols are the elected species of cosmetic ingredient, the following alcohol is elected:

(h) ethanol (species of claim 40).

In the event of further prosecution in which hair care components are the elected species of cosmetic ingredient, the following polymers are is elected:

(i) cationic silicone polymers (species of claim 41).

Method claim 52 reads on the buffer species.

Should the Examiner require or consider it advisable that the specification, claims and/or drawing be further amended or corrected in formal respects to put this case in condition for final allowance, then it is requested that such amendments or corrections be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing the case to allowance, he or she is invited to telephone the undersigned at 1-631-549 4700.

In view of the foregoing, favorable allowance is respectfully solicited.

Respectfully submitted,

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